

UNITED STATES DISTRICT COURT

Northern

District of

California

UNITED STATES OF AMERICA
V.

KIE-CON, INC.

JUDGMENT IN A CRIMINAL CASE (For Organizational Defendants)

CASE NUMBER: CR-10-0934 MAG
George Niespolo, Duane Morris LLP, One Market, #2000,
San Francisco, CA 94105
Defendant Organization's Attorney

THE DEFENDANT ORGANIZATION:

☒ pleaded guilty to count(s) One of a One-Count Information

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The organizational defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
13 U.S.C. §§ 1311(a) and 1319(c)(1)(A)	Clean Water Act	April 12, 2007	1

The defendant organization is sentenced as provided in pages 2 through 5 of this judgment.

☐ The defendant organization has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant organization must notify the United States attorney for this district within 30 days of any change of name, principal business address, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant organization must notify the court and United States attorney of material changes in economic circumstances.

Defendant Organization's
Federal Employer I.D. No.: 01-0969687

Defendant Organization's Principal Business Address:

3551 Wilbur Avenue

Antioch, CA 94509-8530


Defendant Organization's Mailing Address:

3551 Wilbur Avenue

Antioch, CA 94509-8530

September 1, 2011

Date of Imposition of Judgment


Signature of Judge

Nathanael Cousins, United States Magistrate Judge
Name and Title of Judge

September 9, 2011

Date

DEFENDANT ORGANIZATION: KIE-CON, INC.

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PROBATION

The defendant organization is hereby sentenced to probation for a term of :

Three (3) Years.

The defendant organization shall not commit another federal, state or local crime.

If this judgment imposes a fine or a restitution obligation, it is a condition of probation that the defendant organization pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant organization must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page (if indicated below).

STANDARD CONDITIONS OF SUPERVISION

- 1) within thirty days from the date of this judgment, the defendant organization shall designate an official of the organization to act as the organizations's representative and to be the primary contact with the probation officer;
- 2) the defendant organization shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 3) the defendant organization shall notify the probation officer ten days prior to any change in principal business or mailing address;
- 4) the defendant organization shall permit a probation officer to visit the organization at any of its operating business sites;
- 5) the defendant organization shall notify the probation officer within seventy-two hours of any criminal prosecution, major civil litigation, or administrative proceeding against the organization;
- 6) the defendant organization shall not dissolve, change its name, or change the name under which it does business unless this judgment and all criminal monetary penalties imposed by this court are either fully satisfied or are equally enforceable against the defendant's successors or assignees; and
- 7) the defendant organization shall not waste, nor without permission of the probation officer, sell, assign, or transfer its assets.

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ADDITIONAL PROBATION TERMS

1. Defendant Kie-Con shall pay a total aggregate amount of Five Million One Hundred Twenty-Five Dollars (\$5,000,125.00) as set forth below:

a. Fine: Kie-Con shall pay a fine of Three Million Five Hundred Thousand Dollars (\$3,500,000.00). The criminal fine shall be paid within seven (7) days of the entry of judgment by wire transfer to the Clerk of the United States District Court.

b. Mandatory Special Assessment: Pursuant to 18 U.S.C. § 3013, Kie-Con shall pay a One Hundred Twenty-Five Dollars (\$125.00) mandatory special assessment at the time of sentencing.

c. Community Service: Kie-Con shall make a community service payment of One Million Five Hundred Thousand Dollars (\$1,500,000.00). The community service payment shall be made within seven days of entry of judgment and paid as follows:

i. Seven Hundred and Fifty Thousand Dollars (\$750,000.00) payable to the "National Fish & Wildlife Foundation," taxpayer ID No. 52 138 4139, with reference made to the "United States vs Kie-Con, Inc." with its corresponding docket number. The monies shall be used solely to fund environmental projects, initiatives, and enforcement activities designed for the benefit, preservation, and restoration of the environment, watersheds, and ecosystems in the Northern District of California, including Contra Costa County where the facility is located, and in the San Francisco Bay. Monies shall be accounted for to Congress in annual reports required by 16 U.S.C. § 3706(b). The Community Service Payment may be made via delivery of a certified check to the National Fish and Wildlife Foundation, attention Chief Financial Officer, 1133 15th Street, NW, Suite 1100, Washington DC, 20005.

ii. Seven Hundred and Fifty Thousand Dollars (\$750,000.00) to the Contra Costa County District Attorney for deposit in the "DA ENVIRON/OSHA" fund, to be used for the funding of environmental projects, initiatives, and enforcement activities designed for the benefit, preservation, and restoration of the environment, watersheds, and ecosystems in Contra Costa County.

iii. Kie-Con will not seek any reduction in its tax obligations as a result of these community service payments. Kie-Con will not characterize, publicize, or refer to these community service payments as voluntary donations or contributions.

d. No further violations: Kie-Con shall commit no further violations of federal, state, or local law, including those laws and regulations for which primary enforcement has been delegated to state authorities, and shall conduct all its operations in accordance with the environmental laws of the United States.

i. Payments: Payment in full of the monetary amounts set forth herein including all special assessments, fines, restitution, and community service.

ii. Environmental Compliance Plan: Kie-Con shall develop, adopt, implement, and fund the Environmental Compliance Plan ("ECP") attached hereto as Exhibit A.

iii. Kie-Con shall be responsible for all costs associated with the development, implementation, maintenance, and monitoring of the ECP.

iv. Kie-Con, during the term of probation, and at all reasonable times and with as reasonable prior notice to the Government as practicable, will provide the Government with full access to the facility as appropriate within its security and its safety policies and practices, as well as all facilities, employees, and records that are relevant to monitoring compliance with the terms and conditions of the ECP.

v. If Kie-Con changes its name, the renamed company shall meet all of the obligations of Kie-Con under this judgment. If Kie-Con merges with another company, the newly created or merged company shall meet all of the obligations of Kie-Con under this judgment.

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CRIMINAL MONETARY PENALTIES

The defendant organization must pay the following total criminal monetary penalties under the schedule of payments on Sheet 4.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 125.00	\$ 3,500,000.00	\$ 1,500,000.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☒ The defendant organization shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant organization makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Natl Fish & Wildlife Foundation Taxpayer ID 52 138 4139		\$750,000.00	
Contra Costa District Attorney DA ENVIRON/OSHA Fund		\$750,000.00	

TOTALS	\$ _____	\$ <u>1,500,000.00</u>
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☒ Restitution amount ordered pursuant to plea agreement \$ 1,500,000.00

☒ The defendant organization shall pay interest on restitution or a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 4 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant organization does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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SCHEDULE OF PAYMENTS

Having assessed the organization's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☒ Lump sum payment of \$ 5,000,125.00 due immediately, balance due

☒ not later than within 7 days of judgment entry, or
☐ in accordance with ☐ C or ☐ D below; or

B ☐ Payment to begin immediately (may be combined with ☐ C or ☐ D below); or

C ☐ Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☒ Special instructions regarding the payment of criminal monetary penalties:

Seven Hundred and Fifty Thousand Dollars (\$750,000.00) payable to the "National Fish & Wildlife Foundation," taxpayer ID No. 52 138 4139, with reference made to the "United States vs Kie-Con, Inc." with its corresponding docket number. The monies shall be used solely to fund environmental, projects, initiatives, and enforcement activities designed for the benefit, preservation, and restoration of the environment, watersheds, and ecosystems in the Northern District of California, including Contra Costa County where the facility is located, and in the San Francisco Bay. Monies shall be accounted for to Congress in annual reports required by 16 U.S.C. § 3706(b). The Community Service Payment may be made via delivery of a certified check to the National Fish and Wildlife Foundation, attention Chief Financial Officer, 1133 15th Street, NW, Suite 1100, Washington DC, 20005.

Seven Hundred and Fifty Thousand Dollars (\$750,000.00) to the Contra Costa County District Attorney for deposit in the "DA ENVIRON/OSHA" fund, to be used for the funding of environmental projects, initiatives, and enforcement activities designed for the benefit, preservation, and restoration of the environment, watersheds, and ecosystems in Contra Costa County.

~~All criminal monetary penalties are made to the benefit of the environment.~~

The defendant organization shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant organization shall pay the cost of prosecution.

☐ The defendant organization shall pay the following court cost(s):

☐ The defendant organization shall forfeit the defendant organization's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.